

WISHA Interim Operations Memorandum
Washington Department of Labor and Industries
#97-7-F
IDENTITIES OF WITNESSES AND INTERVIEWED EMPLOYEES

Approved: Michael Wood, Senior Program Manager
WISHA Policy & Technical Services

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Background

In enforcing the obligations of employers under the Washington Industrial Safety and Health Act (WISHA), found in Chapter 49.17 RCW, the Department of Labor and Industries has the authority to conduct workplace inspections. This authority includes the ability "to question *privately* any . . . employee" (RCW 49.17.070, emphasis added). Historically, L&I has taken a broad view of the privacy accorded by the statute, and has routinely protected both the identity and, frequently, the statements of employees interviewed by inspectors in the course of WISHA inspections.

RCW 42.17.210 *et seq* includes the requirements of the state's Public Disclosure Act (PDA). The PDA generally provides for the release of public agency records, *unless such records are protected against disclosure by one of the exemptions in the PDA or by another statute*. RCW 42.17.310(d) provides for the protection of investigation records necessary to "effective law enforcement," while RCW 42.17.310(e) provides for the protection of the identity of complainants and witnesses.

This interim memo provides guidance to WISHA staff in applying these various statutes to the issue of employee interviews and statements pursuant to a WISHA inspection until such time as guidance can be provided through a WISHA Regional Directive or changes to the WISHA Compliance Manual. It also provides guidance related to the appropriate use of the "Witness Statement" (form number F416-093-000) and the "Statement" (form number F416-016-000).

Policy

1. Form F416-093-000, issued 10/95 and titled "Witness Statement," must be used *only for investigations of fatalities or catastrophes*. These forms must not be used for any other purpose. Any remaining stock of form F416-093-000 issued prior to October of 1995 shall be recycled and not used.
2. Staff conducting accident investigations must make no promises of confidentiality beyond the protection of employee identity to the extent described on form F416-093-000.
3. Staff conducting routine WISHA inspections may use Form F416-016-000, issued 10/95 and titled "Statement" for written statements, or they may use other appropriate written means to take such statements.
4. Whether the "Statement" form is used or not, and whether taking signed statements or simply recording employee interview responses in his or her work notes, the CSHO should ask all employees interviewed during the course of an inspection to indicate an individual preference for disclosure or non-disclosure of the employee's identity (if the request is not made by the employee in writing, it must be recorded in the CSHO's notes).

5. The CSHO must mark as "Confidential" only those statements and interview notes that include the identity of employees who have requested non-disclosure.
6. The CSHO may advise an employee who requests that his or her identity be protected that the department will not release the employee's identity as part of a public records request unless ordered otherwise by a court or directed by the Office of the Attorney General. The CSHO must make no further promise of confidentiality.
7. Public Disclosure staff will honor the expressed preference of any employee and protect the employee's identity by eliminating references to the employee's name or other identifying material or information before releasing the remainder of the employee's statement. If necessary, Public Disclosure staff will request regional assistance in identifying and eliminating such references.
8. For statements or interview notes obtained prior to the date of this memo and where no employee preference has been previously obtained, Public Disclosure shall contact the appropriate regional supervisor before releasing employee identities on work notes or statements marked "confidential." The supervisor may use his or her staff to determine an employee preference as necessary.
9. Whenever confidentiality concerns are particularly acute, staff are strongly encouraged to obtain a *written* request for confidentiality from the employee.